

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,)	
)	Civil Action No. 05-10917 PBS
Plaintiff,)	
)	
v.)	
)	
J.T. POSEY COMPANY,)	
)	
Defendant.)	
)	
AND RELATED COUNTERCLAIM.)	
)	

**ASSENTED-TO MOTION FOR ONE-DAY EXTENSION FOR
FILING MOTIONS FOR SUMMARY JUDGMENT**

Defendant and Counterclaimant J.T. Posey Company, Inc. ("Posey") hereby moves the Court for a one-day extension of the deadline for filing two motions for summary judgment. The summary judgment filing deadline was December 11, 2006. Posey electronically filed two motions after 11:00 p.m. P.S.T. on December 11, 2006. However, because the motions were filed from California so late in the evening, they were docketed on December 12, 2006.

Posey is aware that the Court's "Electronic Case Filing Administrative Procedures" provide that the transmission of documents filed electronically must be completed prior to 6:00 p.m. E.S.T. in order to be considered timely filed that day and Posey had intended to file its motions in advance of that time. However, it was unable to do so as the consequence of an unexpected snafu.

Specifically, in advance of the December 11 deadline, Posey was preparing two motions for summary judgment and an accompanying separate Statement of Uncontroverted Facts (the "Separate Statement"). On Sunday, December 10, 2006, the Separate Statement was revised to include the factual assertions that were included in one of the memoranda in support of one of the motions. The memorandum was then cross-referenced against the Separate Statement.

Unfortunately, the Separate Statement that was updated and against which the memorandum was cross-referenced, was a much earlier draft of the Separate Statement. It included numerous facts which had been deleted from the supporting memoranda and it lacked all of the facts that were found in the second memorandum and in the then-current version of the Separate Statement.

The mistake was not discovered until just after noon (after 3:00 p.m. Eastern time) on December 11, 2006, at which point the Separate Statement needed to be revised substantially and supporting evidentiary references found. Then, the two supporting memoranda had to be cross-referenced against it again. The entire process took a substantial number of hours and, by the time it was finished, it was well past the filing deadline. Thus, the motions and the supporting documents were filed nearly nine hours late. Posey sincerely regrets the late filing.

Notwithstanding the late filing, Posey's motions were electronically available to HipSaver's counsel when business commenced on December 12, 2006. Moreover, because the current briefing schedule gives HipSaver nearly four weeks to prepare its oppositions to Posey's motions (i.e., until January 8, 2007), neither HipSaver nor its counsel will be prejudiced by the brief filing delay. Finally, a ruling on the motions will

likely reduce the number of issues in the case, clarify the remaining issues for the parties and the Court and, potentially, promote settlement.

Based upon the foregoing, Posey submits that there is good cause for the Court to extend by one day the filing deadline for (i) Posey's motion for summary judgment on HipSaver's complaint, and (ii) its motion for partial summary judgment on Count I of its counterclaim.

Local Rule 7.1 Certification

I certify that on December 13, 2006, I conferred in good faith with counsel for HipSaver in an effort to resolve the issues presented by it and they assented to it.

Dated: December 13, 2006

J.T. POSEY COMPANY

By its attorneys,

/s/ Douglas H. Morseburg
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CERTIFICATE OF SERVICE

I certify that this document has been filed through the Electronic Case Filing System of the United States District Court for the District of Massachusetts and will be served electronically by the court to the Registered Participants identified in the Notice of Electronic filing.

December 13, 2006

/s/ Donald K. Piper
Donald K. Piper